

Comment (Case 3601) – Some matters arising from the Case and the broader issues involved and the need to remove ambiguity in Chapter 3 of the Code
(see BZN 70(4): 234–237 [Case]; 71(1): 30–35, 35–36, 37–38; 71(2): 133–135; 71(3): 181–182; 71(4): 252–253; 72(1): 61–64, 65–78; 72(3): 222–226)

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1. The issues raised in Case 3601 (see Hoser, 2013), seeking validation of a single generic name (*Spracklandus* Hoser, 2009) by validating the publication in which the name was erected (*Australasian Journal of Herpetology*) go far beyond a single name and publication, but involve a complex of matters affecting the current Code and the interpretation of several Articles in Chapter 3 (Criteria of Publication).

2. Kaiser et al. (2013), following a discussion as to whether the recent vanity publications of R. Hoser (*Australasian Journal of Herpetology*) and R. Wells (*Australian Biodiversity Record*) meet the Code's publication criteria (and having concluded that they did not), proposed to ignore the herpetological publications of both of these authors from the arbitrary date of 2000. They urged fellow herpetologists to follow their lead. This decision implied that names established by both workers *prior to* the year 2000, but under similar circumstances, would remain available and consequently inferred that the publications in which these earlier names occurred would be considered to have met the Code's publication criteria.

3. The consequence of this decision by Kaiser et al. (2013), and their supporters, has been the subsequent erection of many new names (as replacement names, new names or junior synonyms) for many Wells and Hoser names that Kaiser and his colleagues now regard as unpublished, for nomenclatural purposes, under the conditions set out in the fourth (1999) edition of the *International Code of Zoological Nomenclature*. While their actions were subsequently endorsed by 70 eminent herpetologists (Rhodin et al., 2015), the fundamental issue remains unaddressed by the Commission: do the journals *Australasian Journal of Herpetology* and *Australian Biodiversity Record* meet the requirements of Chapter 3 of the Code to be considered 'published' for nomenclatural purposes?

4. Naish (2013) and Denzer et al. (2016) have outlined the issues involved in the Hoser dispute (but not those of Richard Wells). Apart from the authors of the Kaiser et al. (2013) paper, many subsequent commentators (e.g., Kaiser, 2014; Schleip, 2014; Thomson, 2014; Rhodin et al., 2015) continued to explore the validity of the Wells and Hoser journals by emphasising issues raised by Kaiser and his coauthors, viz., availability

and distribution, whether the published papers were subject to peer review, and whether they were ‘published’ under the terms set out in the Code? Kaiser (2014; BZN 71(1): 30–34) forensically examined Issue 7 of the *Australasian Journal of Herpetology* and concluded that this issue of the journal did not meet the essential criteria. Is he correct? And if so, what about other issues of this journal, and of *Australian Biodiversity Record*?

5. Several commentators, responding to Harvey & Yanega (2013), have also emphasised perceived deleterious impacts of the Wells and Hoser journals on herpetological *taxonomy*. We reject these arguments. Any published taxonomic works, whether or not subject to a pre-publication refereeing process, are invariably subjected to post-publication peer review and are ultimately accepted, accepted in part, or rejected by all or part of the taxonomic community. New *taxonomic arrangements*, therefore, including the erection of new taxa, can be rejected or ignored by any taxonomist who regards them as incorrect or poorly argued. However the *names* of any new taxa in such works cannot be ignored, and come under the purview of the Code. As stated in the Code’s introduction, the Code and the Commission are concerned solely with zoological nomenclature – principally the *stability of names* within taxonomy – and not with taxonomic arrangements or standards as such.

6. Our concern here is for nomenclatural stability. We do not argue either for or against a particular submission. Rather, we seek clarification and, where necessary, action by the Commission on the following points:

(a) Do the journals *Australasian Journal of Herpetology* and *Australian Biodiversity Record* unequivocally meet or not meet the publication criteria, for nomenclatural purposes, set out in Chapter 3 of the Code? We would argue that the justifications so far presented in the literature for rejecting these journals – that they are vanity publications lacking scientific credibility, that they have not been subject to conventional refereeing processes, that their contained taxonomies are poor or spurious, that their accessibility has been selective, and that they fail to meet the criteria of availability for nomenclatural purposes set out in Chapter 3 of the current Code – are highly subjective, and require testing by the Commission. So, too, an assertion that the *Australasian Journal of Herpetology* clearly does meet the publication requirements set out in the Code (Wellington, 2015) is equally subjective and debatable. Nevertheless, rejecting these journals on the grounds so far argued carries implications for many other journals – past and present – in which new taxa in disciplines other than herpetology have been described in publications that questionably meet the Code’s criteria. A ruling by the Commission that these journals *do not* meet the Code’s criteria for “publication for nomenclatural purposes” would immediately resolve any ambiguity and invalidate all contained nomenclatural acts, including the erection of new names for asserted new taxa.

(b) To date the rejection of the Hoser and Wells names seems to rest almost entirely on the argument that the journals in which they were published fail to meet basic standards of scientific rigor for taxonomic studies. Further, it has also been argued that they are unavailable because they are not consistent with the non-mandatory provisions of the “Code, Introduction: Development and underlying principles” (e.g., Schleip, 2014), that they arguably fail to meet the Code’s standards of publication availability (for nomenclatural purposes) under Chapter 3 of the Code, and that they cause nomenclatural instability. However, if these journals were to be considered by the Commission to meet the conditions of valid publication set out in Chapter 3 then the Hoser and Wells

names would be validated and the many replacement names currently being established to replace them will simply become junior synonyms. Pending resolution of this issue by the Commission (independently, or in response to application(s)), there continues to be a significant dual nomenclature being created (as set out in Thomson, 2014) to confuse not only herpetologists but also agencies or governments needing to cite the names in regulatory or conservation legislation, and in other scientific disciplines such as medicine.

(c) The arguments by Kaiser et al. (2013) for ensuring scientific integrity and standards in published taxonomic treatments are unassailable, but they are not currently mandated by the Code. However any attempts to establish mandatory rules for a scientific discipline such as taxonomy are toothless unless there is a final arbiter in disputed cases. Currently there is no such arbiter in *taxonomy* beyond the peer review process by individual journals or by subsequent community adoption (usage). But the Commission is an absolute arbiter in nomenclature while having no role in resolving taxonomic disputes. Urgent consideration by the Commission of some of the suggestions made by Kaiser and his colleagues (such as mandating the Code's Recommendations and Code of Ethics), or perhaps requiring ICZN approval and registration of journals in which new names may be established – would go a long way towards resolving the problems they have identified. However if an individual taxonomist, or group of taxonomists, determine to take unilateral nomenclatural actions contrary to the provisions of the present Code, or without the sanction of the Commission, they are merely replacing one form of anarchy or vandalism with another. We strongly endorse the call by Kaiser et al. (2013) for the Commission to act urgently to resolve these problems, of which the Commission and its Code are integral parts. Without such resolution a confusing dual nomenclature will continue to plague the herpetological literature.

(d) A further problem with the responses to the original submission in Case 3601, and with subsequently proposed modifications and additions, is that their authors seek to have issues 1–21 of the *Australasian Journal of Herpetology* suppressed, for nomenclatural purposes, by use of the Commission's plenary powers. But what is the status of nomenclatural acts published in issues subsequent to issue 22 of this journal? The editor(s)/author(s) of these suppressed issues might well decide to validate papers that appeared in them by republishing them. Such republication has been done previously by Wells & Wellington (1988a, b, 1989), Wells (2002, 2007a, b) and Hoser (2002), sometimes with additional information in order to validate previously-described taxa whose incomplete descriptions rendered them *nomina nuda* when first published e.g., *Chelodina rankini* Wells & Wellington, 1985, and *Elseya stirlingi* Wells & Wellington, 1985, both considered *nomina nuda* by Iverson et al. (2001), but republished with additional data by Wells (2007a, b) respectively.

(e) However, as indicated above, Kaiser et al. (2013) stated their intention to ignore *all* works published by Raymond Hoser and Richard Wells after the year 2000. Such actions would require responses by the Commission different from those currently being sought in Case 3601. Indeed, to our knowledge no action has yet been requested to validate their determination to ignore the post-2000 nomenclatural works of Richard Wells.

(f) In a discussion of the history of the availability criteria for determining whether an article or journal was a valid *publication for nomenclatural purposes*, the late Dr. W.D.L. Ride, chairman of the Editorial Committee for the current edition of the Code, concluded in his Introduction to the Code that “it seems likely, in the longer term, and with the

development of new information systems, that the solution will not lie in patching up a definition of publication but, rather, in scrapping it and finding a means of replacing ‘publication’ as a primary determinant of availability”. We believe that this time has arrived. However, while concurring with the frustration and outrage felt by many commentators, we abhor the intemperate language used by both sides in published or public exchanges, including through social media.

(g) In relation to suggestions that the Commission might adopt a role in the adjudication of taxonomic disputes, *phylogenies and taxonomic hierarchies* are artificial constructs based on data with various levels of accuracy and rigour that can always be subject to multiple interpretations. Most importantly, any published taxonomic arrangement in any journal and by even the most respected practitioner, can be freely accepted, accepted in part, or rejected by other taxonomists and non-taxonomists at their discretion. Only when a taxonomy has been accepted by the relevant specialist community as the most parsimonious of those currently available, is there peer pressure to adopt it. The use of a particular taxonomic arrangement is not, and never can be, mandated by an individual or group, and always represents a hypothesis. Consequently, calls for the Commission to extend its brief to cover adjudication of taxonomic disputes are both unnecessary and, we suggest, impossible to carry out fairly and objectively. Indeed, any attempt to do so would pit individual against individual, group against group, clique against clique, and would therefore risk dependence of outcome on which ‘side’ could muster the most ‘votes’. For the Commission to undertake this role in all animal groups would involve an horrendous task and responsibility that, in the absence of objective rules, and therefore objective outcomes, Commissioners or group specialists are not qualified to undertake.

(h) We also suspect that the furore about Hoser’s (and Wells’s) taxonomies would dissipate if their vanity publications did not involve the description of a plethora of new, often poorly circumscribed and named taxa, as these and their relevant taxonomic treatments could be ignored by those researchers who did not agree with them. Indeed, we believe that many respondents are unable or unwilling to face the real issue – that most of their objections to these publications are based on new names rather than new taxonomies, especially when those new names, through priority, usurp names intended for those same taxa that they or their colleagues have also planned to describe in the course of their research. While we may criticise this attitude, it is nonetheless immensely annoying and frustrating to be ‘pipped at the post’ by less rigorous, superficial research by authors who do not face the constraints of intensive data gathering and analysis, institutional approvals, journal editors, referees and publication waiting lists, and who ignore the non-mandatory Code of Ethics set out in the Code. Unfortunately, the number of taxa named by any individual worker has an “immortality effect”, whether sought or unsought, whereby the number of names authored by a particular worker can be misinterpreted by present and future non-specialists as a reflection of that worker’s research impact on a particular field of study – often long after that worker’s demise.

(i) Case 3601 neither requires use of the plenary powers of the Commission to suspend application of aspects of the Code (Article 78.1), nor involves reference of the Case to the Commission for determination under the Specific Powers of the Code (Article 78.2.2). Hence it is not mandatory for the Commission to issue an Opinion on this Case (Article 78.2.3). Despite this, we urge the Commission to act quickly, and independently of current open cases if necessary, to resolve what is now a major shortcoming in

the Code that is leading to the establishment of dual nomenclatures, each of untested validity.

7. Finally, it should also be pointed out that following the Commission's decision in 1991 that the Australian Society of Herpetologists' application to suppress earlier works of Wells & Wellington (Case 2531; Australian Society of Herpetologists, 1987) was "outside its remit", many of the specific and generic names created by Wells and Wellington, and subsequently by Wells, and by Hoser, have been widely adopted by Australian herpetologists, including listing in Australian Commonwealth Government and Australian State Government legislation, although often applied to different taxonomic concepts. Consequently the issues arising from this Case are more complex than presented. We seek only a rapid resolution of the disruptive and nomenclature-destabilising terminological uncertainty in Chapter 3 of the Code, or the implementation of earlier suggestions for the registration of names, or of journals in which new names may be published. Attempts to link the issues raised in Case 3601 to *taxonomic* instability are in our view spurious. Names, not taxonomies, are at the heart of the present dispute. We suggest that without the authority to erect new names, recalcitrant self-publishing authors would either stop publishing, or would have to subject their taxonomic work to conventional peer review in respected, authorised journals.

8. Many respondents to the call by Harvey & Yanega (2013) for comments on 'taxonomic practice and the Code' have advised against the Commission becoming an adjudicator of ethical standards in taxonomy or nomenclature, "even if the Code of Ethics is violated". However creating a code of ethics without there being any consequence for transgressors defies logic, especially when such transgressions lead to dual nomenclatures for the same taxa – the very antithesis of the nomenclatural stability that underpins the principle objectives of the Code and the Commission. Should Hoser be condemned for creating a plethora of new taxa that are poorly defined and poorly justified, and his papers not subject to rigorous review? Should his critics be condemned for accepting the taxonomic validity of many of his taxa, while rejecting his names for these taxa in favour of their own? Or should both be condemned for exploiting the Code's ambiguities to permit whichever conflicting interpretation of the rules suits their purpose?

9. Consequently we argue that such conflicting interpretations create nomenclatural instability, and that the Commission must act to remove any existing ambiguities in the Code by modifying the relevant Articles or adding new ones where necessary.

10. We also submit this material in response to the Commission's call (Harvey & Yanega, 2013) for comments on taxonomic practice and the Code.

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